

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

PATRICK BLAYLOCK,)	
)	
Plaintiff,)	8:05CV372
)	
v.)	
)	
CARGILL, INCORPORATED, a)	ORDER
Delaware corporation, and)	
MENLO LOGISTICS, INC.,)	
A Delaware corporation,)	
)	
Defendants.)	
)	

This matter is before the Court on defendant Cargill's motion for a *Lone-Pine* Case Management Order (Filing No. 25).¹ Cargill asks this Court to exercise its discretion, under Rule 16 of the Federal Rules of Civil Procedure, to enter a Case Management Order that would bifurcate discovery into two phases: phase one, which would focus on the facts and information

¹ *Lone-Pine* orders are pre-discovery orders that are designed to "handle complex litigation and potential burdens on defendants and the Court in mass tort litigation." *Acuna v. Brown & Root Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). The "*Lone-Pine* Order" originated in the *Lore v. Lone Pine Corp.*, 1986 WL 637507 (N.J. Super. Ct. Nov. 18, 1986), a New Jersey toxic tort case, involving multiple plaintiffs suing 464 defendants. *Id.* at *1. Plaintiffs sought personal injury and property damages from a landfill operator and the generators and haulers of toxic materials to the landfill. *Id.* To manage the large number of defendants, the Court issued a Case Management Order, which essentially bifurcated discovery into two phases. In the first phase, plaintiffs were required to furnish the basic facts supporting their *prima facie* cases. Specifically, the Court required the plaintiffs to submit reports of their treating physicians and medical or other experts supporting (1) each individual plaintiff's claim of injury and (2) a causal connection between the injury and exposure at the landfill. *Id.* at *2. If the plaintiffs substantiated their claims, then the Court would allow the action to proceed. *Id.* at *4. The *Lone-Pine* Court, concluding that there was a complete lack of information as to casual relationship and damages, ultimately dismissed plaintiffs' action after the first discovery phase. *Id.*

EXHIBIT

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relating to plaintiff's alleged exposure to *Histoplasma capsulatum* and his histoplasmosis diagnosis, and phase two, which would permit broader discovery addressing any remaining issues in the case, including but not limited to, whether plaintiff's alleged histoplasmosis infection was caused by exposure to *H. capsulatum* at Cargill's Blair facility. Cargill claims that a phased-discovery approach would be appropriate in this case due to both the alleged complexity in diagnosing histoplasmosis and the number of potential plaintiffs. Cargill cites to the *Manual for Complex Litigation* and *Lore v. Lone Pine Corp.*, 1986 WL 637507 (N.J. Super. Ct. Nov. 18, 1986) and its progeny to support its position.

Having reviewed the relevant authorities, including the affidavit of Mark A. Roberts, M.D., Ph.D., which was submitted by Cargill in support of its motion, the Court will deny Cargill's motion for a *Lone-Pine* type Case Management Order. This case, which is one of four related histoplasmosis cases before this Court, is dissimilar, for obvious reasons, from the mass tort cases in which *Lone-Pine* type orders have been utilized. Discovery will proceed as anticipated under the Federal Rules of Civil Procedure. Accordingly,

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IT IS ORDERED that Cargill's motion for a *Lone-Pine*
Case Management Order (Filing No. 24) is denied.

DATED this 14th day of December, 2005.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court